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PRIORITY DUE TO AIR MAIL AND

FREEDOMS OF THE AIR

I. INTRODUCTION

1. General Background

In 1979, just as the United Nations Transport and Communications Decade for Africa was taking off, the Economic Commission for Africa mandated two experts of the Universal Postal Union, who were consultants at the ECA to investigate the main obstacles to postal development in Africa and to make proposals which could be taken into account during the Decade.

One of the observations of the experts was in connection with improvement of postal dispatches: generally speaking, airlines do not adhere to priority regulations concerning air mail services. They wrongly consider mail bags as freight of secondary importance. This situation has tended to worsen on account of the laxity of postal administrations which generally entrust transhipment of mail bags to specialized services in airports, over which they cannot exercise any control.

"Air links parallel to the equator are few in number and in addition, some of these are rashly subjected to traffic restrictions.

In fact, relations between airlines and postal administrations seem to be virtually non-existent, both at the level of the countries themselves and that of restricted postal unions".

For these considerations, the experts proposed that a Contact Committee be created to link postal administrations and airline companies throughout Africa as a whole, or according to the main subregions. This committee would among other things, be responsible for eliminating all restrictions on mail bags with regard to traffic rights.

Project POP-60-014 pertaining to the creation of a permanent contact committee between airline companies and postal services had at first been registered by the UPU, as a project under the Transport and Communications Decade for Africa. It was taken over and successfully implemented by PAPU which in August 1986, created the Contact Committee between PAPU/AFRAA.

2. Objectives and Functions of the Contact Committee

Article 3 of the agreement establishing the statutes of the PAPU/AFRAA Contact Committee, mandates it:

"To ensure permanent consultations between African airlines serving Africa and the postal administrations on the continent, for the specific purpose of obtaining:

1. Reliable information on airline time-tables and route schedules;

2. Consultations on tariffs and conditions for making maximal use of air services for transporting mail;

3. Prompt payment of airlines by postal administrations;

4. Settlement of disputes between postal administrations and airlines".

One of the main functions to be attributed to this Committee seems to be the need to establish permanent consultations between airlines and postal administrations, with a view to ensuring that the priority due to the transportation of mail is respected. This specific aspect of mail dispatches, although not explicitly stated in the list of functions assigned to the Committee, can be considered as included in Article 3 Para. 11 of the agreement, which relates to the best type of information to be obtained on the routes serviced.

II. PRIORITY TO BE GRANTED TO POSTAL TRAFFIC

1. Priority granted by airlines which are members of IATA

With regard to priority for air mail, the 1984 UPU/IATA agreement states that "IATA would agree that first class mail should be granted priority on the following terms and conditions; following an agreement between airlines and post offices. For any particular route, the maximum quantity to be delivered on each trip shall be evaluated on the basis of statistics and the corresponding capacity (volume-weight) shall be reserved in the aircraft. In the event that the volume of mail exceeds the reserved capacity, the transporter will offload the required amount of cargo and will not accept to reserve any space, so that the excess mail will not be dispatched. No passenger who has already made reservations shall be refused a place on the flight but the company will do its utmost to transport the additional mail, either by tranferring the passengers to another transporter, or by utilizing another aircraft.

With regard to "other items" (AO) second class mail, priority will only be granted to freight which if necessary, will be offloaded by the airlines; furthermore, priority shall be granted to AO mail over passengers without prior reservations. Postal parcels will have priority over freight".

What must be retained here is that, as a rule, mail has absolute priority on the entire air traffic network.

2. Priority granted by postal administrations

The first article in the convention associates the notion of priority with that of freedom of transit and reads as follows: "freedom of transit, whose basic principle is expressed in Article one of the Constitution, obliges each postal administration, to dispatch by the fastest routes which it uses for its own items, sealed dispatches and unsealed letter post items which are entrusted to it by another administration. This obligation also applies to air mail, whether or not the intermediate postal administrations take part in their re-routing".

Resolution C60 of the Lausanne Congress (1974) states, in connection with hijacking," that postal dispatches of any sort or category, affected by an act of "air piracy" are inviolable and that the subsequent dispatch

of such shipments should be granted priority by the country to which the aircraft was flown or freed, even if this aircraft is involved in a dispute of an extra-postal nature.

Here also the tests reveal that postal administrations attach great importance to the priority that must be given to mail shipments, even in cases of hijacking.

III. OBSTACLES

It is abnormal for mail bags to travel thousands of kilometres in a few hours, only to end up abandoned for several days or even weeks in transit airports, due to the incompetence of both postal administrations and airline companies.

1. Obstacles affecting priority due to mail services owing to the incompetence of postal administrations

- The infrastructures; the sorting or transit centres are often badly situated or operate from unsuitable premises;

- The timetables of these centres do not correspond with air traffic schedules; their empirical methods of operating seem to indicate that the personnel of these centres are not adequately trained;

- Transhipment operations: operations involving taking over and delivery of shipments by postal services are not always performed with the required speed and care;

- The creation of postal transhipment services within the precincts of airports but under the responsibility of postal administrations is absolutely necessary;

- Utilization of airlines by postal services is not sufficiently diversified;

- Essential monitoring of mail transport services is not always carried out;

- Inadequate coordination between transport and postal services and often, total lack of co-operation.

Although such difficulties affect the quality of shipments, they are not, however, the major concerns of this paper, since they were adequately dealt with by other work groups.

2. Obstacles stemming from the incompetence of airlines

Such obstacles arise primarily from the generalised protectionist attitudes which hinder the development of African airline networks.

At the Mbabane Conference on Air Freedoms (Swaziland 1984), the ECA representative observed that "African countries continue to adopt protectionist policies so as to protect the traffic of their own national airlines, however under developed it may be, whereas this traffic could benefit from considerable expansion provided they are each willing to accept the appropriate companies. African routes are still affected by this problem and up till now it is sometimes much quicker to go through Europe to get from somewhere in West Africa to somewhere in East, Central or North Africa. The main cause of the inadequacy of links in Africa is the refusal to grant relevant traffic rights to African airline companies. He further observed "that one sector which is seriously affected is the postal sector. Urgent mail can spend days and even weeks without arriving at its destination and this forces people with very meagre resources at their disposal, to turn to other more expensive services.

The representative of the African Civil Aviation Commission (AFCAC) observed at this same conference "that the problem of exchange and exercise of fifth freedom rights is the main obstacle to the development of air trnsport in Africa and one of the main reasons for the imperfections of the African network, as well as for the poor quality of air links.... The strict adherence to protectionist policies in this sector and in particular, refusal to grant fifth freedom rights, have had adverse consequences for the airline company which is thus protecting itself, as well as for the entire network of African air transport."*

Let us now define the main freedoms of the air**

First freedom

This is the privilege to fly over the territory of another State without landing.

Second freedom

This is the privilege to land within the territory of another State but not for commercial purposes, which means without embarking or disembarking commercial traffic, but solely for refuelling or for any other technical reasons.

Third freedom

This entitles an operating State to transport passengers, mail and freight from its national territory to the territory of another co-contracting State. The reverse operation constitutes the fourth freedom.

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* Annex 1 Mbabane Declaration on African Air Transport.

** For more detailed information on the various freedoms of the air, see Annex II to this document.

Fifth freedom

This necessitates the intervention of a third State in the relations between two States involved in an agreement of direct exchange of the third and fourth Freedoms. If A and B represent the two States, the fifth freedom will be the right of A's airline company to carry commercial traffic between B and a third State C.

The problem of exchange and exercise of fifth freedom rights is the major obstacle to the development of air transport in Africa and consequently to the rapid exchange of postal traffic between postal administrations. This problem is well-known to civil aviation authorities, but the various recommendations of subregional or regional meetings on the liberal award of traffic rights have not had any follow-up.

IV. THE SEARCH FOR SOLUTIONS

A first proposal is to draw up a questionnaire addressed to all postal administrations inviting them, in collaboration with civil aviation authorities, to make a survey of all airlines stopping over in each country and which do not enjoy the fifth freedom right.

Later on, taking into account the fact that IATA accords great priority to postal traffic, it could be useful to implement measures aimed at encouraging national civil aviation authorities to authorize airlines which do not enjoy fifth freedom rights to nevertheless transport postal traffic. This authorization could even be requested for the stops included in the second freedom agreements.

The Tokyo Congress (1969) had furthermore expressed the wish C69 "which invites postal administrations to approach their national civil aviation authorities, in order to obtain special rights for postal traffic, whenever the absence of the fifth freedom causes delays in the shipment of air mail.

There is no need to dwell on the other forms of priority due to air mail, especially for example, the delays due to the monopoly of air mail transportation. These aspects of the non-observance of priority have already been considered in the study entrusted to work group 4 of the PAPU/AFRAA Contact Committee.

V. IN-DEPTH REFLECTIONS

The question dealt with in this document requires in-depth reflections within a work group. There are already seven groups in PAPU. Group 2 is responsible for all technical arrangements between postal administrations and airlines, with a view to improving, harmonizing and developing air mail services.

Group 4 is responsible for a study aimed at getting airlines to apply priority treatment to air mail, as well as a study aimed at sensitizing appropriate authorities in each country, on the delays causes by the fact that national airlines have the monopoly of transporting air mail. Group 4 therefore seems most appropriate to pursue these reflections on delays in dispatches, due to the non liberal granting of air traffic rights.

ANNEX I

MBABANE DECLARATION ON AFRICAN AIR TRANSPORT (1)

Representatives of African Governments, civil aviation authorities, airlines and organizations specifically concerned with air transport in Africa, meeting in Mbabane, Swaziland, from 19 to 23 November 1984 at the African Conference on Freedoms of the Air.

Recalling resolutions ECA/UNTACDA/Res. 79/6 and ECA/UNTACDA/Res. 83/34 on freedoms of the air adopted by the Conference of African Ministers of Transport, Communications and Planning at Addis Ababa in 1979 and Cairo in 1983 respectively,

Recalling resolution CM/Res. 890 (XXXVII) adopted in Nairobi in June 1981 by the OAU Council of Ministers, and the Declaration of General Policy in the Field of Civil Aviation, adopted by resolution CM/Res. 804 (XXXV) of the OAU Council of Ministers and endorsed by the Heads of State and Government of OAU,

Bearing in mind the importance of air transport to the economic development and integration of Africa called for by the Lagos Plan of Action and Final Act,

Recognizing the importance of the initiatives taken and guidance provided by ECA and OAU for the development of a robust and cohesive African air transport system,

Acknowledging with gratitude the contribution by AFCAC and AFRAA to harmonizing and rationalizing air transport policies and practices,

Convinced that the creation of subregional African airlines, and eventually a single, pan-African airline, is a goal that must be pursued,

1. Declare that political will does not present any obstacle to the enhancement of the African air transport network;

2. Affirm their belief that a pragmatic approach will permit immediate improvement in that network;

3. Hereby decide to establish a technical committee on air transport whose terms of reference shall be the following:

The Committee, whose composition is specified in paragraph V below, shall have as its immediate objectives:

(a) Establishing a common African approach on the free exchange of the first and second freedoms of the air;

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(1) Declaration adopted by the Conference on freedoms of the air, organized by the ECA in Mbabane (Swaziland) from 19 to 23 November 1984.

(b) Exhorting African aeronautical authorities to exchange the thrid and fourth freedoms;

(c) Encouraging the exchange of fifth-freedom rights to improve air transport services throughout Africa and exploring the possibilities of enhancing commercial and technical co-operation between African airlines, including compensatory financial schemes or arrangements and joint operation of servies;

(d) Centralizing data collection research and analysis, studying the possibility of establishing a data bank as envisaged by AFCAC, and catalyzing action to exploit the possibilities it finds to be viable;

(e) Promoting financial clearing facilities and alternative ways of dealing with the problem of blocked airline revenues such as using existing or future clearing houses;

(f) Seeking ways of increasing the co-ordination of flight schedules within Africa and promoting services to and from Africa operated by African carriers;

(g) Fostering and maintaining a common approach in negotiations by African government authorities and airlines on traffic rights, aircraft and equipment purchase, financing arrangements etc. with their non-African partners;

(h) Monitoring and fostering the implementation programme on facilitation in accordance with the Recommendations presented by the ECA secretariat in document TRANS/AIR/CONF/84/8. The Committee shall take into account the comments and observations made at the Conference on the need to improve facilitation in Africa, in particular the possibility of simplifying or removing restrictions on visa requirements for the nationals of the OAU member States. Similarly the Committee shall take the necessary action to foster the improvement of facilities offered by the airlines during travel within Africa;

(i) Studying the various existing or possible air routes in Africa with a view to identifying those that can be jointly operated in the interests of the economic and physical development of Africa;

(j) Promoting multinational and/or jointly operated airlines on the subregional level.

IV

The ultimate aim of the committee shall be to bring about a fully integrated aviation system for Africa and a single, pan-African airline as advocated in the Lagos Plan of Action and Final Act.

III

The activities of the Committee shall be co-ordinated by ECA and AFCAC. Both will provide doucmentation and technical support.

IV

The committee shall report periodically to the ECA Conference of Ministers through the Conference of African Ministers of Transport, Communications and Planning, as appropriate, and to the OAU Council of Ministers. Its first report shall be submitted before the 1985 economic summit of OAU Heads of State and Government.

V

The committee shall comprise:

(a) One representative each from ECA, OAU, AFCAC and AFRAA, to be designated by those bodies;

(b) A senior representative of one aviation authority and one airline from each of the five subregions;

(c) Such experts and other representative of regional aviation authorities and airlines as the members referred to in (a) and (b) above may co-opt.

The Chairman of the Committee shall be elected by the non-co-opted members.

VI

Subject to the above stipulations the Committee shall determine its own procedures.

VII

The Committee shall be established and commence work as soon as possible after this conference. In order to expedite the implementation programme without delay, the Conference requests the Executive Secretary of ECA and Secretary General of OAU to take the necessary action to enable the Committee to commence its task.

ANNEX II

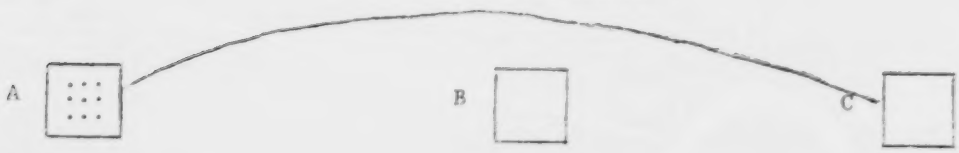
THE FREEDOMS OF THE AIR IN INTERNATIONAL AIR TRANSPORT OPERATIONS (1)

1. Declaration on the Freedoms of the air drawn up at the Chcago Conference (1944)

1.1 The first freedom: implies flying over national territory without landing, illustrated in the following diagram;

Diagram I (2)

First Freedom



Operating state State flown over

1.2 The second freedom: implies a technical stop over, meaning landing for non-commercial purposes, without embarking or disembarking traffic (diagram II)

Operating state

The third and fourth freedoms correspond to a diagram of direct exchange between two countries.

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(1) Extract from Annex II of Circular No. 3 published by AFCAC (September 1973) on the policy of AFCAC member States on bilateral air transport agreements.

(2) In the diagrams the operating State is represented by small dots.

1.3 The third freedom: The operating State transports traffic from its national territory to the territory of the co-contracting State.

1.4 The reverse operation is the exercise of the fourth freedom (Diagram III).

III)

Diagram III

Third Freedom

Third Freedom

Operating state

Fourth freedom of A

1.5 The fifth freedom: implies intervention of a third State in relation to the two States between which there is a theoretical diagram of direct exchange of third and fourth freedoms.

If A and B are the two States, the fifth freedom sanctions the right for an enterprise in A to transport traffic between B and a third state C.

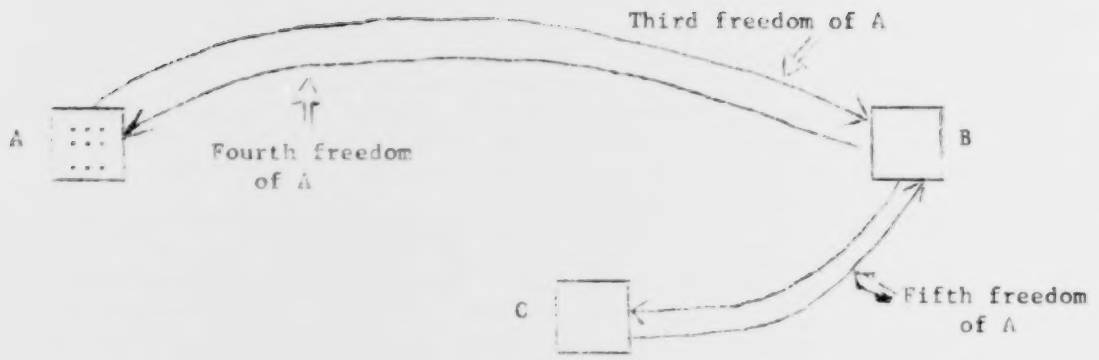
At this stage, the fifth freedom is purely [illegible] and complementary to that of direct exchange since it is defined in relation to the latter. Therefore, its application implies if not the effective operation of third and fourth freedom traffic, then at least the existence of the contractual situation which authorizes this operation and which leads to the granting of a route or connection between at least three points of the commercial service.

In practice, these three points may be situated in such a way that they give rise to the application of the fifth freedom in two classical categories, namely:

(a) First case

In an exchange relationship between country A and country B, the third country C is geographically interposed between A and B, as seen in the diagram below:

Diagram IV



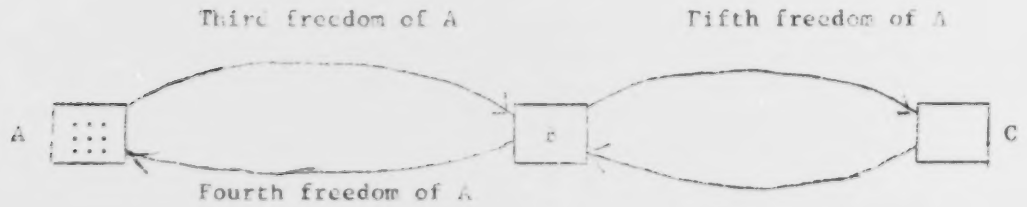
Concrete examples: Shannon and Gander on the BOAC transatlantic London - New York route; Rome on the Air France Paris - Beirut route, etc.

This type of fifth Freedom can be referred to as the "Interposed Fifth Freedom"

(b) Second case

In an exchange relationship between country A and Country B, country C is situated beyond B in relation to A, as seen in the following diagram:

Diagram V



Concrete examples: Mexico in relation to the Paris - New York line; Los Angeles in relation to the Paris - Montreal route etc.

This second classical type of fifth freedom can be referred to as "Fifth Freedom of Extension".

The practical conditions for operating air transport evidently imply a cumulated and confined application of the third and fifth freedoms or the fourth and fifth freedoms, according to the direction of the flight on a given line, since servicing various points and their economic and technical connections correspond to the traffic trends circulating among them. Thus, on the transatlantic London - Shannon - New York route, the British company will operate on the same line and on the same flight the London - New York traffic (third freedom) and the Shannon - New York traffic (5th freedom).

However, there have been cases - exceptional ones indeed - where a country has requested fifth freedom rights without third or fourth freedoms in a particular relationship. Thus in 1955, Canada requested from the United States the rights for the T.C.A. to carry 5th freedom traffic between Boston and Bermuda on the Montreal - Boston - Bermuda route, without carrying third and the fourth freedom traffic between Montreal and Boston. (since its main traffic outward from Canada was composed of tourists heading for Bermuda, and Boston - Bermuda passengers thus meant extra traffic on the most profitable section of the line).

The United States refused this request on the grounds that this unusual pattern of operation was incompatible with their membership of the Bermuda Principles (1946 bilateral Anglo-American agreement) according to which fifth freedom traffic, as a complement to the main third and fourth freedom traffic, implies the actual transportation of the latter.

2. Fifth freedom variations

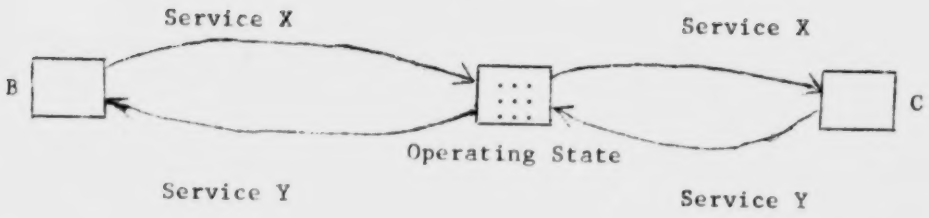
The effects of the geographical situation of countries on the practical application of the fifth freedom has resulted in the existence of two alternatives of this freedom, often referred to as sixth freedom and seventh freedom.

It should however be immediately pointed out that neither their existence nor the terminology have been the subject of an international agreement, or even received official recognition. It has rather become a tradition dictated by practice, in order to attempt to clarify, judging from experience, situations whose analysis and comprehension can be facilitated in this way.

2.1 The sixth freedom

Exercising the sixth freedom requires a State which is geographically interposed between two other States, to operate traffic between these two States, with an intermediate stop over, for commercial or merely technical purposes, on its own territory according to the diagram which follows (diagram VI):

Diagram VI



Concrete examples: A passenger transported by a French airline from New York to Frankfurt via Paris; a passenger transported by an American airline from Mexico to Paris via New York.

This situation occurs at the moment as result of the following two conditions:

(a) The existence of bilateral agreements among the three States concerned (agreements AB, AC and BC). These agreements include technical and commercial freedoms on the routes considered (such conditions could be the subject of a multilateral agreement, but this has not been drawn up so far).

(b) Operating practices which make it possible for operating country A (diagram VI) which has a sales office in country B, to sell a ticket to a passenger wishing to travel:

- either to country C, without breaking his journey in intermediate country A, which also happens to be the transporting company's home country;

- or to country C, with a temporary break in his journey in intermediate country A.

Since this operating pattern is not officially approved, the intermediate stop over in the country of the transporting company has the effect (if not the objective, since this is a tolerated practice) of allowing transporting country A to subsequently justify itself to countries B and C. If in fact countries B and C were to object to the airline of the intermediate country transporting passengers between their two territories, on the grounds that the six freedom has no official status, intermediate country A could advance the argument that the journey of the passenger in question depends in fact, legally, on two commercial rights, the fourth freedom (from B to A on the trip BAC) and the third freedom (from A to C, second section of the trip BAC). This argument, which in short consists of breaking down the sixth freedom into two components dependent on direct exchange of rights (third and fourth freedoms), could if necessary, be supported by an operating practice consisting of selling two separate tickets, one for section BA and the other for section AC.

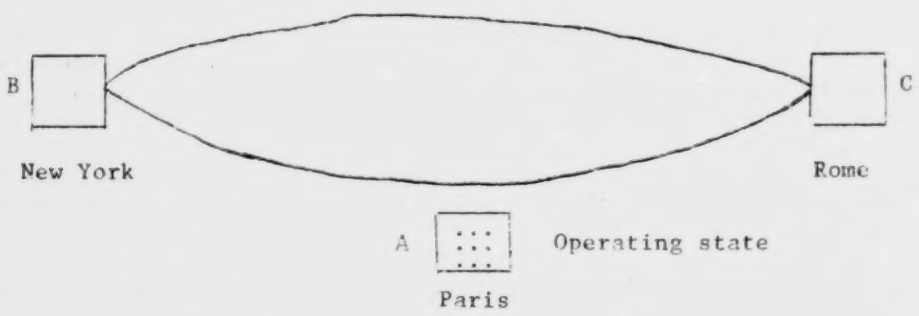
2.2 The Seventh Freedom

The fifth and sixth freedoms are in current practice. The seventh freedom is very rarely applied. It ha been referred to in respect of two different situations or concepts.

(a) Concept I

In this context, the pattern of the seventh freedom (but this concept is far from unanimous) would be that in which the operator of country A would carry traffic between two countries B and C without an intermediate stopover and even without flying over its own territory A. The diagram would be as follows (diagram VII).

Diagram VII



Legally, this concept implies a pherilateral framework, since the direct route BC (New York - Rome), which is operated by a French airline, could not be included in a bilateral agreement between the United States and France, since the flight does not land on French territory.

Furthermore, it should be noted that the practical application of this pattern is very rare, since the geographical situation of the countries on the one hand, and the structure of traffic trends on the other, are generally such that the country operating this traffic between a third country, should either make an intermediate stop over on its own territory or at least fly over it. However, the system of exchange of route anticipated by certain countries at the European Regional Co-ordination Conferences held in Strasbourg in 1954 and 1955, had provisions for this possibility.

For example, if one were to consider the hypothesis where three companies, one British, one French and the third Dutch, agreed to coordinate their services on the triangular network London - Amsterdam - Paris, it would be possible for the French company, for example, to operate seventh freedom services (sometimes referred to as extended sixth freedom) between London and Amsterdam, if the effectiveness or the economy of the operation called for it. In sort,

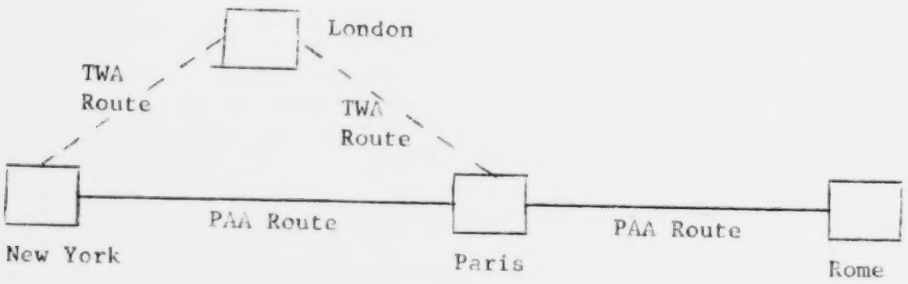
through cooperation agreements, it would mean operating on routes or networks clearly defined beforehand, a short of "freedoms pool" which would enable operators to provide corresponding services with maximum efficiency and flexibility.

(b) Concept II

This concept involves the notion of on-line traffic and off-line traffic.

Exercising the seventh freedom would require a transporter to carry a fifth freedom passenger originating beyond the previous stage of his trip, from a point not included on this transporter's route, according to the following pattern (diagram VIII).

Diagram VIII



The passenger taken by PAA in Paris and transported on its route up to Rome, comes from London where he had been conveyed from New York by another airline, TWA. In this instance, the passenger is indeed from a third country (London) in relation to New York and Paris and therefore falls under the fifth freedom. However, since the fifth freedom section, Paris - London, was not granted to PAA among the routes conceded to it by CAB, this can be considered as off-line traffic, which (depending on certain concepts) would modify its identification in terms of air freedoms.

3. Main problems resulting from the practical application of traffic rights

In principle, the exercise of commercial air freedoms, creates difficult problems and a rather complex overall situation. Among the most contentious issues, mention must be made of the following:

- Articulation of three commercial freedoms of the air (3rd, 4th and 5th freedoms) implies national identification of the traffic, but no agreement has been drawn up on this issue;

- The functioning of some types of agreement concluded between operators, ensures the de facto application of traffic rights which have not been conceded de jure.

3.1 National identification of traffic

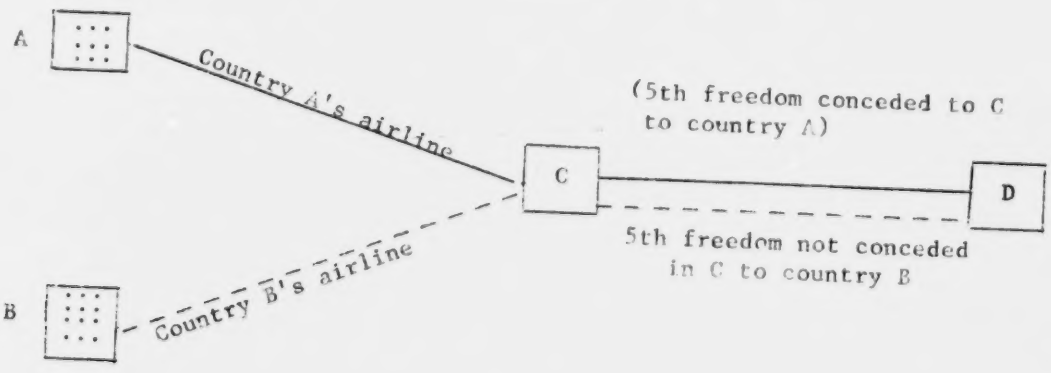
The functional conditions of air travel and network interferences account for the inexistence, at the moment, of any agreement on identification of national traffic. Among other things, the current practice of interrupting travel along the route (stop over), contributes to this confusion.

A passenger travelling on an American airline from New York to Rome, stops over in Paris for three days, then is carried by this same company to Rome. Does the interruption of his journey in Paris modify his nationality as an element of traffic or not? In other words, between Paris and Rome, does he maintain his national identification as 3rd freedom traffic for the United States? Or, does he become 5th freedom traffic for the United States on the Paris - Rome section, meaning 3rd freedom traffic for France, which would thus exercise priority authority over him with regard to transportation? While some people maintain that beyond a certain period of time, carrying a passenger from a point of interruption of his journey is indeed an exercise of the 3rd freedom for the country in which this stop over is made, others claim that the fundamental criterion is the ticket on which the passenger's point of origin and final destination are clearly marked.

3.2 Traffic rights and the functioning of inter-line agreements

Interline agreements are concluded among companies and enable operators to interchange transportation vouchers among themselves. The public thus benefits from the generalized validation of these documents on the networks of various companies. The inaccuracy of regulations and difficulties in monitoring can consequently lead to situations such as the one illustrated in the following diagram (diagram IX).

Diagram IX



If the airline of operating country A enjoys 5th freedom rights in C towards B, whilst this right was denied the airline of operating country B, it will sometimes be possible for the latter, through the mechanism of an interline agreement, to convey from C to B, traffic brought from A to C by the airline of A. Thus, the airline of B would succeed in getting round the ban to which it is subjected in country C. It goes without saying that the situation depends on an agreement with company A, which would consent to this practice unless it encroached upon its own interests.